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16 UNITED STATES DISTRICT COURT  
17 SOUTHERN DISTRICT OF CALIFORNIA  
18 SAN DIEGO DIVISION

19 WHITEWATER DRAW NATURAL  
20 RESOURCE CONSERVATION  
21 DISTRICT, *et al.*,

22 Plaintiffs,

23 v.

24 KIRSTJEN M. NIELSEN, *et al.*,

25 Federal Defendants.

**Case No. 3:16-cv-2583**

**FEDERAL DEFENDANTS’  
ANSWER TO PLAINTIFFS’  
AMENDED COMPLAINT**

Hon. H. James Lorenz

1 Pursuant to Federal Rules of Civil Procedure 8 and 15, Kirstjen M. Nielsen, in her  
2 official capacity as Secretary of Homeland Security, and the Department of Homeland  
3 Security (“DHS”), Federal Defendants, by their undersigned counsel, submit the  
4 following Answer and defenses to the claims and allegations in Plaintiffs’ Amended  
5 Complaint for Declaratory and Injunctive Relief (ECF No. 44).

6 The paragraph headings in this Answer correspond to the paragraph headings in  
7 Plaintiffs’ Amended Complaint and are included solely for the purpose of organizational  
8 convenience in matching the answers provided herein with the allegations made in the  
9 Amended Complaint. The “headings” are not part of Federal Defendants’ answer to the  
10 allegations. Federal Defendants do not waive any defensive theory or agree to or admit  
11 that Plaintiffs’ headings are accurate, appropriate, or substantiated. When a textual  
12 sentence is followed by a citation or citations, the textual sentence and its accompanying  
13 citation are referred to as one sentence.

14 **“PRELIMINARY STATEMENT”**

15 1. Paragraph 1 constitutes Plaintiffs’ characterization of their case to which no  
16 response is required. To the extent a response is required, Federal Defendants deny any  
17 violation of law and deny that Plaintiffs are entitled to any relief whatsoever. Paragraph  
18 1 also contains allegations related to claims that were dismissed by the Court, in its  
19 September 30, 2018 Order Granting Defendants’ Partial Motion to Dismiss (“Order”),  
20 ECF No. 55, and therefore no further response is required.

21 2. Paragraph 2 constitutes Plaintiffs’ characterization of their case to which no  
22 response is required. To the extent a response is required, Federal Defendants deny any  
23 violation of law and deny that Plaintiffs are entitled to any relief whatsoever.

24 3. Sentences one, two, and three of Paragraph 3 purport to characterize and quote  
25 the National Environmental Policy Act (“NEPA”) and its implementing regulations,  
26 which speak for themselves and are the best evidence of their contents. Federal  
27 Defendants deny any allegations contrary to the plain language, context, or meaning of  
28

1 NEPA and its regulations. Sentence four of Paragraph 3 constitutes Plaintiffs'  
2 characterization of their case to which no response is required. To the extent a response  
3 is required, Federal Defendants deny any violation of law and deny that Plaintiffs are  
4 entitled to any relief whatsoever.

5 4. Federal Defendants admit the allegation in the first sentence of Paragraph 4. In  
6 response to the allegations in the second sentence of Paragraph 4, Federal Defendants  
7 admit that in 1970 the Immigration and Naturalization Service (INS) administered the  
8 federal programs authorized by statute regulating the entry of foreign nationals into the  
9 United States. Federal Defendants deny the remainder of the allegations in the second  
10 sentence of Paragraph 4. Federal Defendants deny the allegations in the third sentence of  
11 Paragraph 4. Federal Defendants deny the allegations in the fourth sentence of Paragraph  
12 4 and aver the Department of Homeland Security was created in November 2002. The  
13 allegations in the fifth sentence of Paragraph 4 constitute conclusions of law to which no  
14 response is required. Federal Defendants deny the allegations in the sixth sentence of  
15 Paragraph 4 and aver DHS adopted NEPA procedures in 2006, which were revised in  
16 2014 by DHS Directive 023-01rev1 and Instruction 023-01-001rev1.

17 5. The allegations in the first four sentences of paragraph 5 constitutes Plaintiffs'  
18 characterization of DHS's Instruction Manual, which speaks for itself and constitutes the  
19 best evidence of its contents. Moreover, Plaintiffs' challenge to DHS's Instruction  
20 Manual (Count I) has been dismissed by the Court. ECF No. 55. To the extent a  
21 response to the first four sentences of paragraph 5 is required, Federal Defendants deny  
22 any violation of law and deny that Plaintiffs are entitled to any relief whatsoever. Federal  
23 Defendants deny the allegations in the fifth sentence of paragraph 5.

24 6. Federal Defendants lack the knowledge or information sufficient to form a  
25 belief as to the truth of the allegations in Paragraph 6 and on that basis, deny the  
26 allegations. Footnote 1 references information contained in an affidavit and two reports  
27 from purported experts. These documents speak for themselves and are the best evidence  
28

1 of their contents. Federal Defendants reserve the right to challenge the use of these  
 2 documents, and other attached to Plaintiffs' complaint, as a basis for merits review in this  
 3 APA challenge, and on any other grounds that would prevent them from being admissible  
 4 in this case.

5 7. Paragraph 7 constitutes Plaintiffs' characterization of their case to which no  
 6 response is required. To the extent a response is required, Federal Defendants deny any  
 7 violation of law and deny that Plaintiffs are entitled to any relief whatsoever.

### 8 **"JURISDICTION AND VENUE"**

9 8. The allegations in the first sentence of Paragraph 8 consist of conclusions of  
 10 law, which do not require a response. The allegations in the second sentence of  
 11 paragraph 8 constitute Plaintiffs' characterization of their case to which no response is  
 12 required. To the extent a response is required, Federal Defendants deny any violation of  
 13 law and deny that Plaintiffs are entitled to any relief whatsoever.

14 9. The allegations in Paragraph 9 consist of conclusions of law, which do not  
 15 require a response.

### 16 **"RELEVANT STATUTES"**

#### 17 **A. "THE NATIONAL ENVIRONMENTAL POLICY ACT"**

18 10. Paragraph 10 purports to characterize and quote NEPA and its implementing  
 19 regulations, which speak for themselves and are the best evidence of their contents.  
 20 Federal Defendants deny any allegations contrary to the plain language, context, or  
 21 meaning of NEPA and its regulations.

22 11. Paragraph 11 purports to characterize and quote NEPA, which speaks for itself  
 23 and is the best evidence of its content. Federal Defendants deny any allegations contrary  
 24 to the plain language, context, or meaning of NEPA.

25 12. Paragraph 12 purports to characterize and quote NEPA, which speaks for itself  
 26 and is the best evidence of its content. Federal Defendants deny any allegations contrary  
 27 to the plain language, context, or meaning of NEPA.

1        13. Paragraph 13 purports to characterize and quote NEPA and its implementing  
2 regulations, which speak for themselves and are the best evidence of their contents.  
3 Federal Defendants deny any allegations contrary to the plain language, context, or  
4 meaning of NEPA and its regulations.

5        14. Paragraph 14 purports to characterize and quote NEPA and its implementing  
6 regulations, which speak for themselves and are the best evidence of their contents.  
7 Federal Defendants deny any allegations contrary to the plain language, context, or  
8 meaning of NEPA and its regulations.

9        15. Paragraph 15 purports to characterize and quote NEPA and regulations  
10 promulgated by the Council on Environmental Quality (“CEQ”), which speak for  
11 themselves and are the best evidence of their contents. Federal Defendants deny any  
12 allegations contrary to the plain language, context, or meaning of NEPA and the CEQ  
13 regulations.

14        16. Paragraph 16 purports to characterize and quote CEQ regulations, which speak  
15 for themselves and are the best evidence of their contents. Federal Defendants deny any  
16 allegations contrary to the plain language, context, or meaning of the CEQ regulations.

17        17. Paragraph 17 purports to characterize and quote CEQ regulations, which speak  
18 for themselves and are the best evidence of their contents. Federal Defendants deny any  
19 allegations contrary to the plain language, context, or meaning of the CEQ regulations.

20        18. Federal Defendants deny the allegations in the first sentence of Paragraph 18  
21 and aver that DHS adopted its current NEPA Directive and Instruction Manual in  
22 November 2014. The remaining allegations in Paragraph 18 purport to characterize and  
23 quote the DHS Instruction Manual, which speaks for itself and is the best evidence of its  
24 contents. Federal Defendants deny any allegations contrary to the plain language,  
25 context, or meaning of the DHS Instruction Manual.

26        19. Paragraph 19 purports to characterize and quote NEPA, which speaks for itself  
27 and is the best evidence of its content. Federal Defendants deny any allegations contrary  
28

1 to the plain language, context, or meaning of NEPA.

2 20. Paragraph 20 purports to characterize and quote CEQ regulations, which speak  
3 for themselves and are the best evidence of their contents. Federal Defendants deny any  
4 allegations contrary to the plain language, context, or meaning of the CEQ regulations.

5 21. Paragraph 21 purports to characterize and quote CEQ regulations, which speak  
6 for themselves and are the best evidence of their contents. Federal Defendants deny any  
7 allegations contrary to the plain language, context, or meaning of the CEQ regulations.

8 22. Paragraph 22 purports to characterize and quote CEQ regulations, which speak  
9 for themselves and are the best evidence of their contents. Federal Defendants deny any  
10 allegations contrary to the plain language, context, or meaning of the CEQ regulations.

11 23. Paragraph 23 purports to characterize and quote CEQ regulations, which speak  
12 for themselves and are the best evidence of their contents. Federal Defendants deny any  
13 allegations contrary to the plain language, context, or meaning of the CEQ regulations.

14 24. Paragraph 24 purports to characterize and quote CEQ regulations, which speak  
15 for themselves and are the best evidence of their contents. Federal Defendants deny any  
16 allegations contrary to the plain language, context, or meaning of the CEQ regulations.

17 25. Paragraph 25 purports to characterize and quote CEQ regulations, which speak  
18 for themselves and are the best evidence of their contents. Federal Defendants deny any  
19 allegations contrary to the plain language, context, or meaning of the CEQ regulations.

## 20 **B. “THE ADMINISTRATIVE PROCEDURE ACT”**

21 26. Paragraph 26 purports to characterize and quote both the APA and the decision  
22 in *Motor Vehicle Mfrs. Ass’n of the U.S. Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S.  
23 29, 43 (1983), which speak for themselves and are the best evidence of their contents.  
24 Federal Defendants deny any allegations contrary to the plain language, context, or  
25 meaning of the APA and the decision in *Motor Vehicle Mfrs. Ass’n*.

## 26 **“PARTIES”**

### 27 **A. “PLAINTIFFS”**

1        27. The allegations in the first sentence of paragraph 27 purport to characterize the  
2 contents of a website, which speaks for itself and is the best evidence of its content. The  
3 allegations in the second, third, fourth, and fifth sentences purport to characterize a  
4 website, as well as Title 27, Chapter 6 of the Arizona Revised Statutes, which speak for  
5 themselves and are the best evidence of their content. Federal Defendants deny any  
6 allegations contrary to the plain language, context, or meaning of the cited Arizona  
7 statutes.

8        28. Federal Defendants lack the knowledge or information sufficient to form a  
9 belief as to the truth of the allegations in Paragraph 28 and on that basis, deny the  
10 allegations.

11        29. Federal Defendants lack the knowledge or information sufficient to form a  
12 belief as to the truth of the allegations in the first sentence of Paragraph 29 and on that  
13 basis, deny the allegations. Federal Defendants deny the Plaintiffs or the members of the  
14 plaintiff organizations are harmed by challenged actions of Defendants. The allegations  
15 in the second sentence of Paragraph 29 purport to characterize a paper by Jessica  
16 Vaughan which speaks for itself and is the best evidence of its content.

17        30. Federal Defendants lack the knowledge or information sufficient to form a  
18 belief as to the truth of the allegations in Paragraph 30 and on that basis, deny the  
19 allegations. Federal Defendants deny the Plaintiffs or the members of the plaintiff  
20 organizations are harmed by challenged actions of Defendants.

21        31. Federal Defendants lack the knowledge or information sufficient to form a  
22 belief as to the truth of the allegations in Paragraph 31 and on that basis, deny the  
23 allegations. Federal Defendants deny the Plaintiffs or the members of the plaintiff  
24 organizations are harmed by challenged actions of Defendants.

25        32. Federal Defendants lack the knowledge or information sufficient to form a  
26 belief as to the truth of the allegations in Paragraph 32 and on that basis, deny the  
27 allegations. Federal Defendants deny the Plaintiffs or the members of the plaintiff  
28



1 organizations are harmed by challenged actions of Defendants.

2 33. Federal Defendants lack the knowledge or information sufficient to form a  
3 belief as to the truth of the allegations in the first, second, third, seventh, eighth, fifteenth,  
4 sixteenth, and seventeenth sentences of Paragraph 33 and on that basis, deny the  
5 allegations. The allegations in the fourth, fifth and sixth sentences of Paragraph 33  
6 constitute Plaintiffs' characterization of their case to which no response is required. To  
7 the extent a response is required, Federal Defendants deny any violation of law and deny  
8 that Plaintiffs are entitled to any relief whatsoever. The allegations in the ninth, tenth,  
9 eleventh, twelfth, and thirteenth sentences of Paragraph 33 purport to characterize a paper  
10 by Steven A. Camarota and Bryan Griffith, which speaks for itself and is the best  
11 evidence of its content. The allegations in the eighteenth sentence of Paragraph 33  
12 purport to characterize a paper by Jessica Vaughan which speaks for itself and is the best  
13 evidence of its content.

14 34. The allegations in sentence 12 of Paragraph 34 purport to characterize a website  
15 which speaks for itself and is the best evidence of its content. Federal Defendants aver  
16 that the official population statistics are those compiled by the United States Census  
17 Bureau. Federal Defendants lack the knowledge or information sufficient to form a belief  
18 as to the truth of the allegations in the remainder of Paragraph 34 and on that basis, deny  
19 the allegations. Federal Defendants deny the Plaintiffs or the members of the plaintiff  
20 organizations are harmed by challenged actions of Defendants.

21 35. Federal Defendants lack the knowledge or information sufficient to form a  
22 belief as to the truth of the allegations in the first and third through ninth sentences of  
23 Paragraph 35 and on that basis, deny the allegations. The allegations in the second  
24 sentence of Paragraph 35 appear to pertain to one of the eight programs challenged in  
25 Court II of Plaintiffs' Amended Complaint, the TPS Program, which have been dismissed  
26 by the Court, and thus require no response. To the extent a response is required, Federal  
27 Defendants deny the Plaintiffs or the members of the plaintiff organizations are harmed  
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1 by challenged actions of Defendants.

2 36. The allegations in the third sentence of paragraph 36 constitute Plaintiffs'  
3 characterization of their case to which no response is required. To the extent a response  
4 is required, Federal Defendants deny any violation of law and deny that Plaintiffs are  
5 entitled to any relief whatsoever. Federal Defendants lack the knowledge or information  
6 sufficient to form a belief as to the truth of the remaining allegations in Paragraph 36 and  
7 on that basis, deny the allegations. Federal Defendants deny the Plaintiffs or the  
8 members of the plaintiff organizations are harmed by challenged actions of Defendants

9 37. The allegations in the sixth, seventh and eighth sentences of Paragraph 37  
10 purport to characterize a paper by Griffith, Bryan and Camarota, which speaks for itself  
11 and is the best evidence of its content. Federal Defendants lack the knowledge or  
12 information sufficient to form a belief as to the truth of the remaining allegations in  
13 Paragraph 37 and on that basis, deny the allegations. Federal Defendants deny the  
14 Plaintiffs or the members of the plaintiff organizations are harmed by challenged actions  
15 of Defendants.

16 38. Federal Defendants lack the knowledge or information sufficient to form a  
17 belief as to the truth of the allegations in Paragraph 38 and on that basis, deny the  
18 allegations. Federal Defendants deny the Plaintiffs or the members of the plaintiff  
19 organizations are harmed by challenged actions of Defendants.

20 39. Federal Defendants lack the knowledge or information sufficient to form a  
21 belief as to the truth of the allegations in Paragraph 39 and on that basis, deny the  
22 allegations. Federal Defendants deny the Plaintiffs or the members of the plaintiff  
23 organizations are harmed by challenged actions of Defendants.

24 40. Federal Defendants lack the knowledge or information sufficient to form a  
25 belief as to the truth of the allegations in the first and second sentences of Paragraph 40  
26 but aver that the official population statistics are those compiled by the United States  
27 Census Bureau. Defendants deny any allegation that the cited population statistics result  
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1 from any violation of law by Defendants. Federal Defendants lack the knowledge or  
2 information sufficient to form a belief as to the truth of the allegations in the third and  
3 fourth sentences of Paragraph 40 and on that basis, deny the allegations. Federal  
4 Defendants deny the Plaintiffs or the members of the plaintiff organizations are harmed  
5 by challenged actions of Defendants.

6 41. Federal Defendants lack the knowledge or information sufficient to form a  
7 belief as to the truth of the allegations in Paragraph 41 and on that basis, deny the  
8 allegations. Federal Defendants deny the Plaintiffs or the members of the plaintiff  
9 organizations are harmed by challenged actions of Defendants.

10 42. The allegations in the seventh sentence of paragraph 42 constitute Plaintiffs'  
11 characterization of their case to which no response is required. To the extent a response  
12 is required, Federal Defendants deny any violation of law and deny that Plaintiffs are  
13 entitled to any relief whatsoever. The allegations in the fourth sentence of Paragraph 42  
14 purport to characterize a website that speaks for itself and is the best evidence of its  
15 content. Federal Defendants aver that the official population statistics are those compiled  
16 by the United States Census Bureau. The allegations in the fifth and sixth sentences of  
17 Paragraph 42 purport to characterize a paper by Griffith and Camarota which speaks for  
18 itself and is the best evidence of its content. Federal Defendants lack the knowledge or  
19 information sufficient to form a belief as to the truth of the remainder of the allegations in  
20 Paragraph 42 and on that basis, deny the allegations. Federal Defendants deny the  
21 Plaintiffs or the members of the plaintiff organizations are harmed by challenged actions  
22 of Defendants.

23 43. Federal Defendants lack the knowledge or information sufficient to form a  
24 belief as to the truth of the allegations in the fourth, fifth and seventh sentences of  
25 Paragraph 43 but aver that the official population statistics are those compiled by the  
26 United States Census Bureau. Defendants deny any allegation that the cited population  
27 statistics result from any violation of law by Defendants. Federal Defendants lack the  
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1 knowledge or information sufficient to form a belief as to the truth of the remaining  
2 allegations in Paragraph 43 and on that basis, deny the allegations. Federal Defendants  
3 deny the Plaintiffs or the members of the plaintiff organizations are harmed by  
4 challenged actions of Defendants.

5 44. Federal Defendants lack the knowledge or information sufficient to form a  
6 belief as to the truth of the allegations in Paragraph 44 and on that basis, deny the  
7 allegations. Federal Defendants deny the Plaintiffs or the members of the plaintiff  
8 organizations are harmed by challenged actions of Defendants.

9 45. Federal Defendants lack the knowledge or information sufficient to form a  
10 belief as to the truth of the allegations in Paragraph 45 and on that basis, deny the  
11 allegations. Federal Defendants deny the Plaintiffs or the members of the plaintiff  
12 organizations are harmed by challenged actions of Defendants.

13 46. Federal Defendants lack the knowledge or information sufficient to form a  
14 belief as to the truth of the allegations in the fifth, seventh, eighth, ninth and seventeenth  
15 sentences of Paragraph 46 but aver that the official population statistics are those  
16 compiled by the United States Census Bureau. Defendants deny any allegation that the  
17 cited population statistics result from any violation of law by Defendants. The  
18 allegations in the eighteenth sentence of Paragraph 46 purport to characterize a report,  
19 “Vanishing Open Spaces,” which speaks for itself and is the best evidence of its content.  
20 The Federal Defendants lack the knowledge or information sufficient to form a belief as  
21 to the truth of the remainder of the allegations in Paragraph 46 and on that basis, deny the  
22 allegations. Federal Defendants deny the Plaintiffs or the members of the plaintiff  
23 organizations are harmed by challenged actions of Defendants.

24 47. Federal Defendants lack the knowledge or information sufficient to form a  
25 belief as to the truth of the allegations in Paragraph 47 and on that basis, deny the  
26 allegations. Federal Defendants deny the Plaintiffs or the members of the plaintiff  
27 organizations are harmed by challenged actions of Defendants.

1        **B. “DEFENDANTS”**

2        48. Federal Defendants admit the allegations in the first sentence of Paragraph 48  
 3 except to deny DHS was established in 2003 and to aver that DHS was established in  
 4 November 2002 with the passage of the Homeland Security Act. The allegations in the  
 5 second, third and fifth sentences of Paragraph 48 contain conclusions of law to which no  
 6 response is required. In response to the allegations in the fourth sentence of Paragraph  
 7 48, Federal Defendants admit that U.S. Customs and Border Protection (“CBP”), U.S.  
 8 Citizenship and Immigration Services (USCIS), and U.S. Immigration and Customs  
 9 Enforcement (ICE) are components of DHS.

10       49. Federal Defendants admit the allegations in the first sentence of Paragraph 49.  
 11 The remaining allegations in Paragraph 49 contain conclusions of law to which no  
 12 response is required.

13                                **“GENERAL ALLEGATIONS”**

14                **“People Cause Environmental Impacts. DHS’s Programs That Regulate the**  
 15                **Entry Into and Settlement of People in the United States Causes Human**  
 16                **Population Growth. Accordingly, NEPA Requires Analysis by DHS of these**  
 17                **Programs.”**

18       50. Paragraph 50 constitutes Plaintiffs’ characterization of their case to which no  
 19 response is required. To the extent a response is required, Federal Defendants deny any  
 20 violation of law and deny that Plaintiffs are entitled to any relief whatsoever.

21               i. Paragraph 50(i) purports to characterize and quote NEPA and CEQ  
 22 regulations, which speak for themselves and are the best evidence of their contents.  
 23 Federal Defendants deny any allegations contrary to the plain language, context, or  
 24 meaning of NEPA and the CEQ regulations.

25               ii. The allegations in Paragraph 50(ii) are too vague as to permit a response. To  
 26 the extent a response is required, Federal Defendants deny any violation of law and deny  
 27 that Plaintiffs are entitled to any relief whatsoever.

1           iii.     Federal Defendants deny the allegations in the first sentence of Paragraph  
2 50(iii). Federal Defendants admit the allegations in the second sentence of Paragraph  
3 50(iii). The allegations in the third sentence of Paragraph 50(iii), which concern what the  
4 population growth of the United States would be in the absence of immigration are too  
5 speculative to permit a response and are therefore denied. To the extent a response is  
6 required, Defendants deny any allegation that the cited population figures result from any  
7 violation of law by Defendants. The allegations in the fourth, fifth, sixth, and seventh  
8 sentences of Paragraph 50(iii) purport to characterize the contents of a paper by Steven  
9 A. Camarota which speaks for itself and is the best evidence of its content.

10          iv.     Federal Defendants deny the allegations in the first sentence of paragraph  
11 50(iv), and aver that DHS regulates entry into the United States consistent with the  
12 agency's statutory mandates. The allegation in the second sentence of Paragraph 50(iv)  
13 is Plaintiffs' characterization of their case to which no response is required. To the extent  
14 a response is required, Federal Defendants deny any violation of law and deny that  
15 Plaintiffs are entitled to any relief whatsoever.

16          v.     Paragraph 50(v) constitutes Plaintiffs' characterization of their case to which  
17 no response is required. To the extent a response is required, Federal Defendants deny  
18 any violation of law and deny that Plaintiffs are entitled to any relief whatsoever.

19        51.     Federal Defendants deny the allegations in the first sentence of Paragraph 51.  
20 The allegations in the second sentence of paragraph 51 constitute conclusions of law,  
21 which do not require a response. To the extent a response is required, Federal  
22 Defendants deny any violation of law and deny that Plaintiffs are entitled to any relief  
23 whatsoever.

24        52.     Federal Defendants deny the allegations in the first sentence of Paragraph 52.  
25 The remaining allegations in Paragraph 52 appear to pertain to the eight programs  
26 challenged in Court II of Plaintiffs' Amended Complaint, which have been dismissed by  
27 the Court, and thus require no response.

1 53. Federal Defendants deny the allegations in Paragraph 53.

2 54. Federal Defendants deny the allegations in Paragraph 54.

3 **“DHS’ Eight Programs Regulating the Entry Into and Settlement of Foreign**  
4 **Nationals in the United States”**

5 55. The allegations in Paragraph 55 appear to pertain to the eight programs  
6 challenged in Court II of Plaintiffs’ Amended Complaint, which have been dismissed by  
7 the Court, and thus require no response.

8 56. The allegations in Paragraph 56 appear to pertain to the eight programs  
9 challenged in Court II of Plaintiffs’ Amended Complaint, which have been dismissed by  
10 the Court, and thus require no response.

11 57. The allegations in Paragraph 57 and Table 1 appear to pertain to the eight  
12 programs challenged in Court II of Plaintiffs’ Amended Complaint, which have been  
13 dismissed by the Court, and thus require no response.

14 58. The allegations in the first sentence of Paragraph 58 constitute Plaintiffs’  
15 characterization of their case to which no response is required. To the extent a response  
16 is required, Federal Defendants deny any violation of law and deny that Plaintiffs are  
17 entitled to any relief whatsoever. In response to the allegations in the second sentence of  
18 Paragraph 58, Federal Defendants admit that lawful permanent residents and U.S. citizens  
19 may petition for the admission of both immediate and non-immediate relatives so long as  
20 there is a visa immediately available, and that this process is sometimes characterized as  
21 “chain migration.” The allegations in the third, fourth, and fifth sentences of Paragraph  
22 58 purport to characterize a paper by Stacie Carr and Marta Tienda, which speaks for  
23 itself and is the best evidence of its content.

24 59. The allegations in Paragraph 59 appear to pertain to the eight programs  
25 challenged in Court II of Plaintiffs’ Amended Complaint, which have been dismissed by  
26 the Court, and thus require no response. Further, the allegations in Paragraph 59 purport  
27 to characterize a paper by Jessica Vaughan, which speaks for itself and in the best  
28

1 evidence of its content.

2 60. The allegations in Paragraph 60 appear to pertain to the eight programs  
3 challenged in Court II of Plaintiffs' Amended Complaint, which have been dismissed by  
4 the Court, and thus require no response. Further, the allegations in Paragraph 60  
5 constitute conclusions of law to which no response is required. To the extent a response  
6 is required, Federal Defendants deny any violation of law and deny that Plaintiffs are  
7 entitled to any relief whatsoever.

8 61. The allegations in Paragraph 61 appear to pertain to the eight programs  
9 challenged in Court II of Plaintiffs' Amended Complaint, which have been dismissed by  
10 the Court, and thus require no response. Further, the allegations in Paragraph 60 purport  
11 to characterize a paper by Jessica Vaughan as well as the Immigration and Naturalization  
12 Act, the United States Refugee Act, the Immigration Act of 1990, and the Illegal  
13 Immigration Reform and Immigrant Responsibility Act, each of which speaks for itself  
14 and in the best evidence of its content.

15 62. The allegations in Paragraph 62 and Table 2 appear to pertain to the eight  
16 programs challenged in Court II of Plaintiffs' Amended Complaint, which have been  
17 dismissed by the Court, and thus require no response. Further, the allegations in  
18 Paragraph 62 purport to characterize a paper by Jessica Vaughan, which speaks for itself  
19 and in the best evidence of its content.

20 63. The allegations in Paragraph 63 and Tables 3 and 4 appear to pertain to the  
21 eight programs challenged in Court II of Plaintiffs' Amended Complaint, which have  
22 been dismissed by the Court, and thus require no response. Further, the allegations in  
23 Paragraph 63 purport to characterize a paper by Jessica Vaughan, which speaks for itself  
24 and in the best evidence of its content.

25 64. The allegations in Paragraph 64 and Table 5 appear to pertain to the eight  
26 programs challenged in Court II of Plaintiffs' Amended Complaint, which have been  
27 dismissed by the Court, and thus require no response. Further, the allegations in  
28



1 Paragraph 64 purport to characterize a paper by Jessica Vaughan, which speaks for itself  
2 and in the best evidence of its content.

3 65. The allegations in Paragraph 65 appear to pertain to the eight programs  
4 challenged in Court II of Plaintiffs' Amended Complaint, which have been dismissed by  
5 the Court, and thus require no response.

6 66. Paragraph 66 purports to characterize CEQ regulations, which speak for  
7 themselves and are the best evidence of their contents. Federal Defendants deny any  
8 allegations contrary to the plain language, context, or meaning of the CEQ regulations.

9 67. Sentence one of Paragraph 67 purports to characterize and quote CEQ  
10 regulations, which speak for themselves and are the best evidence of their content.  
11 Federal Defendants deny any allegations contrary to the plain language, context, or  
12 meaning of the CEQ regulations. The remaining allegations in Paragraph 67 appear to  
13 pertain to the eight programs challenged in Court II of Plaintiffs' Amended Complaint,  
14 which have been dismissed by the Court, and thus require no response. Federal  
15 Defendants deny any allegation that the listed impacts result from the agency actions  
16 remaining before the Court, or that Defendants violated NEPA in analyzing the actions  
17 remaining before the Court.

18 68. The allegations in Paragraph 68 appear to pertain to the eight programs  
19 challenged in Court II of Plaintiffs' Amended Complaint, which have been dismissed by  
20 the Court, and thus require no response. To the extent a response is required, Federal  
21 Defendants deny that Defendants violated NEPA in analyzing the actions remaining  
22 before the Court.

23 69. The allegations in the first, second, and fourth sentences of Paragraph 69  
24 constitute Plaintiffs statement of their case to which no response is required. To the  
25 extent a response is required, Federal Defendants deny that they violated NEPA in  
26 analyzing the actions remaining before the Court. The allegations in the third sentence of  
27 Paragraph 69 purport to characterize a paper by Jessica Vaughan, which speaks for itself  
28

1 and in the best evidence of its content.

2 **“DHS’s Categorical Exclusions”**

3 70. Federal Defendants deny the allegations in Paragraph 70.

4 71. Federal Defendants admit the allegations in the first sentence of Paragraph 71  
5 and further aver the rule did not take effect until May 29, 2015. The allegations in the  
6 remaining sentences of Paragraph 71 purport to characterize and quote from 80 Fed. Reg.  
7 23680 and DHS’s Categorical Exclusion A3(d), each of which speaks for itself and is the  
8 best evidence of its content. Federal Defendants deny any allegations contrary to the  
9 plain language, context, or meaning of 80 Fed. Reg. 23680 or Categorical Exclusion  
10 A3(d).

11 72. Federal Defendants admit the allegations in the first sentence of Paragraph 72.  
12 The remaining allegations in the remaining sentences of Paragraph 72 purport to  
13 characterize and quote 81 Fed. Reg. 13039 and DHS’s Categorical Exclusion A3(d), each  
14 of which speaks for itself and is the best evidence of its content. Federal Defendants  
15 deny any allegations contrary to the plain language, context, or meaning of 81 Fed. Reg.  
16 13039 or Categorical Exclusion A3(d).

17 73. Federal Defendants admit the allegations in the first sentence of Paragraph 73.  
18 The remaining allegations in Paragraph 73 purport to characterize and quote 81 Fed. Reg.  
19 82398 and DHS’s Categorical Exclusion A3(d), each of which speaks for itself and is the  
20 best evidence of its content. Federal Defendants deny any allegations contrary to the  
21 plain language, context, or meaning of 81 Fed. Reg. 82398 or Categorical Exclusion  
22 A3(d).

23 74. Federal Defendants admit the allegations in the first sentence of Paragraph 74  
24 and aver that the cited rule took effect on July 17, 2017. Federal Defendants further aver  
25 that on May 29, 2018, DHS proposed a rule ending the International Entrepreneur parole  
26 program and removing the applicable regulations. *See* 83 Fed. Reg. 24,415 (May 29,  
27 2018). The remaining allegations in Paragraph 74 purport to characterize and quote 82  
28

1 Fed. Reg. 5238 and DHS Categorical Exclusions A3(a) and A3(d), each of which speaks  
 2 for itself and is the best evidence of its content. Federal Defendants deny any allegations  
 3 contrary to the plain language, context, or meaning of 82 Fed. Reg. 5238 or Categorical  
 4 Exclusions A3(a) and A3(d).

5 **“Programmatic Environmental Assessment for Actions to Address an**  
 6 **Increased Influx of Unaccompanied Alien Children and Family Units Across**  
 7 **the Southwest Border of the United States”**

8 75. The allegations in the first sentence of Paragraph 75 purport to characterize the  
 9 Programmatic Environmental Assessment for Actions to Address an Increased Influx of  
 10 Unaccompanied Alien Children and Family Units Across the Southwest Border of the  
 11 United States (“PEA”), which speaks for itself and is the best evidence of its content.  
 12 Federal Defendants admit that on June 2, 2014, President Obama issued a Presidential  
 13 Memorandum entitled “Response to the Influx of Unaccompanied Alien Children across  
 14 the Southwest Border.” The remaining allegations in Paragraph 75 purport to  
 15 characterize the PEA and the Presidential Memorandum, each of which speaks for itself  
 16 and is the best evidence of its content. Federal Defendants deny any allegations contrary  
 17 to the plain language, context, or meaning of the PEA or the memorandum.

18 76. In response to the allegations in Paragraph 76, Federal Defendants admit that  
 19 the PEA and Finding of No Significant Impact (“FONSI”) were issued on August 12,  
 20 2014. The remainder of the allegations in Paragraph 76 purport to characterize the PEA  
 21 and FONSI, each of which speaks for itself and is the best evidence of its content.

22 77. The allegations in Paragraph 77 purport to quote the PEA, which speaks for  
 23 itself and is the best evidence of its content. Federal Defendants deny any allegations  
 24 contrary to the plain language, context, or meaning of the PEA.

25 78. Sentences, one, two, three, six, and seven of Paragraph 78 purport to quote and  
 26 characterize the PEA, which speaks for itself and is the best evidence of its content.  
 27 Federal Defendants deny any allegations contrary to the plain language, context, or  
 28

1 meaning of the PEA. The allegations in the fourth sentence of Paragraph 78 regarding  
2 whether “many” children and families “settled” in the United States after the 2014 PEA  
3 was issued are too vague and speculative to enable Federal Defendants to respond, and on  
4 that basis the allegations are denied. Sentence five of Paragraph 78 consists of  
5 conclusions of law, which do not require a response. To the extent a response may be  
6 deemed required, Federal Defendants deny any violation of law.

7 **“Environmental Impacts Resulting from These Programs”**

8 79. The allegations in paragraph 79 appear to pertain to the alleged impacts of the  
9 eight programs challenged in Court II of Plaintiffs’ complaint, which have been  
10 dismissed by the Court, and thus require no response. Federal Defendants deny any  
11 allegation that the listed impacts result from the agency actions remaining before the  
12 Court, or that Defendants violated NEPA in analyzing the actions remaining before the  
13 Court.

14 80. The allegations in paragraph 80 appear to pertain to the alleged impacts of the  
15 eight programs challenged in Court II of Plaintiffs’ complaint, which have been  
16 dismissed by the Court, and thus require no response. Federal Defendants deny any  
17 allegation that the listed impacts result from the agency actions remaining before the  
18 Court, or that Defendants violated NEPA in analyzing the actions remaining before the  
19 Court.

20 81. The allegations in paragraph 81 appear to pertain to the alleged impacts of the  
21 eight programs challenged in Court II of Plaintiffs’ complaint, which have been  
22 dismissed by the Court, and thus require no response. Federal Defendants deny any  
23 allegation that the listed impacts result from the agency actions remaining before the  
24 Court, or that Defendants violated NEPA in analyzing the actions remaining before the  
25 Court.

26 82. The allegations in paragraph 82 appear to pertain to the alleged impacts of the  
27 eight programs challenged in Court II of Plaintiffs’ complaint, which have been  
28

1 dismissed by the Court, and thus require no response. Federal Defendants deny any  
2 allegation that the listed impacts result from the agency actions remaining before the  
3 Court, or that Defendants violated NEPA in analyzing the actions remaining before the  
4 Court.

5 83. The allegations in paragraph 83 appear to pertain to the alleged impacts of the  
6 eight programs challenged in Court II of Plaintiffs' complaint, which have been  
7 dismissed by the Court, and thus require no response. Federal Defendants deny any  
8 allegation that the listed impacts result from the agency actions remaining before the  
9 Court, or that Defendants violated NEPA in analyzing the actions remaining before the  
10 Court.

11 84. The allegations in paragraph 84 appear to pertain to the alleged impacts of the  
12 eight programs challenged in Court II of Plaintiffs' complaint, which have been  
13 dismissed by the Court, and thus require no response. Federal Defendants deny any  
14 allegation that the listed impacts result from the agency actions remaining before the  
15 Court, or that Defendants violated NEPA in analyzing the actions remaining before the  
16 Court.

17 85. The allegations in paragraph 85 appear to pertain to the alleged impacts of the  
18 eight programs challenged in Court II of Plaintiffs' complaint, which have been  
19 dismissed by the Court, and thus require no response. Federal Defendants deny any  
20 allegation that the listed impacts result from the agency actions remaining before the  
21 Court, or that Defendants violated NEPA in analyzing the actions remaining before the  
22 Court.

23 86. The allegations in paragraph 86 appear to pertain to the alleged impacts of the  
24 eight programs challenged in Court II of Plaintiffs' complaint, which have been  
25 dismissed by the Court, and thus require no response. Federal Defendants deny any  
26 allegation that the listed impacts result from the agency actions remaining before the  
27 Court, or that Defendants violated NEPA in analyzing the actions remaining before the  
28

1 Court.

2 87. The allegations in paragraph 87 appear to pertain to the alleged impacts of the  
3 eight programs challenged in Court II of Plaintiffs' complaint, which have been  
4 dismissed by the Court, and thus require no response. Federal Defendants deny any  
5 allegation that the listed impacts result from the agency actions remaining before the  
6 Court, or that Defendants violated NEPA in analyzing the actions remaining before the  
7 Court.

8 88. The allegations in paragraph 88 appear to pertain to the alleged impacts of the  
9 eight programs challenged in Court II of Plaintiffs' complaint, which have been  
10 dismissed by the Court and thus require no response. Federal Defendants deny any  
11 allegation that the listed impacts result from the agency actions remaining before the  
12 Court, or that Defendants violated NEPA in analyzing the actions remaining before the  
13 Court.

14 89. The allegations in paragraph 89 appear to pertain to the alleged impacts of the  
15 eight programs challenged in Court II of Plaintiffs' complaint, which have been  
16 dismissed by the Court, and thus require no response. Federal Defendants deny any  
17 allegation that the listed impacts result from the agency actions remaining before the  
18 Court, or that Defendants violated NEPA in analyzing the actions remaining before the  
19 Court.

20 90. The allegations in paragraph 90 appear to pertain to the alleged impacts of the  
21 eight programs challenged in Court II of Plaintiffs' complaint, which have been  
22 dismissed by the Court, and thus require no response. To the extent a response is  
23 required, Federal Defendants deny that Defendants violated NEPA in analyzing the  
24 actions remaining before the Court.

25 91. The allegations in paragraph 91 appear to pertain to the alleged impacts of the  
26 eight programs challenged in Court II of Plaintiffs' complaint, which have been  
27 dismissed by the Court, and thus require no response. To the extent a response is  
28

required, Federal Defendants deny that Defendants violated NEPA in analyzing the actions remaining before the Court.

**“CAUSES OF ACTION”**

**“COUNT I”**

“The DHS Instruction Manual Violates the APA and NEPA by Failing to Require NEPA Compliance with Respect to its Actions Relating to the Entry Into and Settlement of Foreign Nationals in the United States”

[Paragraphs 92 – 102]: Per the Court’s Order, this count is dismissed.

**“COUNT II”**

“DHS is Violating the APA and NEPA by Failing to Engage in Any NEPA Review with Respect to its Eight Programs Regulating the Entry Into and Settlement of Foreign Nationals in the United States”

[Paragraphs 103 – 107]: Per the Court’s Order, this count is dismissed.

**“COUNT III”**

“The Categorical Exclusion A3 Established by DHS on November 6, 2014, Violates the APA”

108. Federal Defendants incorporate by reference all preceding paragraphs as if set forth fully herein.

109. Paragraph 109 purports to characterize and quote CEQ regulations, which speak for themselves and are the best evidence of their contents. Federal Defendants deny any allegations contrary to the plain language, context, or meaning of the CEQ regulations.

110. Paragraph 110 purports to quote DHS’s categorical exclusion A3, which speaks for itself and is the best evidence of its contents. Federal Defendants deny any allegations contrary to the plain language, context, or meaning of categorical exclusion A3.

111. The allegations in the first sentence of Paragraph 111 purport to characterize and quote DHS’s categorical exclusion A3, which speaks for itself and is the best



evidence of its contents. Federal Defendants deny any allegations contrary to the plain language, context, or meaning of categorical exclusion A3. Federal Defendants deny the allegations in the remainder of Paragraph 111.

112. The allegations in the first and second sentences of Paragraph 112 constitute conclusions of law to which no response is required. To the extent a response is required, the allegations are denied. The allegations in the third sentence of Paragraph 112 purport to characterize the CEQ NEPA regulations which speak for themselves and are the best evidence of their contents. Federal Defendants deny any allegations contrary to the plain language, context, or meaning of the CEQ Regulations. Federal Defendants deny the allegation in the fourth sentence of Paragraph 112.

113. Federal Defendants deny the allegations in Paragraph 113 and deny any violation of law.

114. Federal Defendants deny the allegations in Paragraph 114 and deny any violation of law.

#### **“COUNT IV”**

#### **“The Categorical Exclusion A3 is Arbitrary and Capricious as Applied to Four Actions Regulating the Entry Into and Settlement of Foreign Nationals in the United States”**

115. Federal Defendants incorporate by reference all preceding paragraphs as if set forth fully herein.

116. Federal Defendants deny the allegations in Paragraph 116 and its subparagraphs and deny any violation of law.

117. Sentences one and two of Paragraph 117 purport to quote CEQ regulations, which speak for themselves and are the best evidence of their content. Federal Defendants deny any allegations contrary to the plain language, context, or meaning of those regulations. Federal Defendants deny the remaining allegations in Paragraph 117.

118. Federal Defendants deny the allegations in the first, second, and fifth sentences

1 of Paragraph 118. The allegations in the third and fourth sentences of Paragraph 118  
 2 purport to characterize and quote the four challenged decisions, NEPA, and the CEQ's  
 3 NEPA regulations, all of which speak for themselves and are the best evidence of their  
 4 content. Federal Defendants deny any allegations contrary to the plain language, context,  
 5 or meaning of the challenges decisions, statute, or the regulations.

6 \*115. Federal Defendants deny the allegations in the Paragraph incorrectly numbered  
 7 as Paragraph 115 and deny any violation of law.

8 119. Federal Defendants deny the allegations in Paragraph 119 and deny any  
 9 violation of law.

10 120. Federal Defendants deny the allegations in Paragraph 120 and deny any  
 11 violation of law.

## 12 **“COUNT V”**

### 13 “Failure to Take a “Hard Look” at the Environmental Impacts of the June 2, 14 2014, Action “Response to the Influx of Unaccompanied Alien Children” in 15 Violation of NEPA and the APA”

16 121. Federal Defendants incorporate by reference all preceding paragraphs as if set  
 17 forth fully herein.

18 122. Paragraph 122 purports to characterize NEPA, which speaks for itself and is the  
 19 best evidence of its content. Federal Defendants deny any allegations contrary to the  
 20 plain language, context, or meaning of NEPA.

21 123. Federal Defendants deny the allegations in Paragraph 123 and deny any  
 22 violation of law.

23 124. Federal Defendants deny the allegations in Paragraph 124 and deny any  
 24 violation of law.

## 25 **“PRAYER FOR RELIEF”**

26 The remainder of the Complaint constitutes Plaintiffs' request for relief, to which  
 27 no response is required. To the extent a response is required, Defendant denies any  
 28

1 violation of NEPA or the APA, and denies that Plaintiffs are entitled to the requested  
2 relief or any relief whatsoever.

3 Wherefore, Federal Defendants request that the Court deny in all respects  
4 Plaintiffs' requests for relief, dismiss the Amended Complaint, enter judgment for  
5 Federal Defendants, and grant Federal Defendants such other relief as may be  
6 appropriate.

### 7 **GENERAL DENIAL**

8 Federal Defendants deny any allegations of the Amended Complaint, whether  
9 express or implied, not specifically admitted, denied, or qualified herein.

### 10 **DEFENSES**

- 11 1. Plaintiffs have failed to state a claim upon which relief can be granted.
- 12 2. Plaintiffs lack standing to bring their claims.
- 13 3. Plaintiffs have waived or failed to exhaust their administrative remedies.

14  
15  
16 Respectfully submitted,

17 DATED: November 14, 2018

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